Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Implementation of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-259
Broadcast Signal Carriage Issues	)	

REPLY COMMENTS IN SUPPORT OF PETITION
FOR RECONSIDERATION AND/OR CLARIFICATION
OF TRIBUNE BROADCASTING COMPANY

Tribune Broadcasting Company ("Tribune"), by its attorneys, hereby submits these reply comments in support of its Petition for Reconsideration and/or Clarification in the above-captioned proceeding. These comments reply to the Opposition filed by Time Warner Entertainment Company, L.P., which is the only party to have opposed Tribune's Petition.[1]

As Tribune explained in its Petition, the Commission should clarify that the "superstation exception" to retransmission consent[2] applies only to out-of-market retransmissions of the station's signal via satellite. Such an interpretation is consistent with Congress' clear intention in enacting the Cable Act that every commercial broadcasting station

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[1] Chris-Craft Industries, Inc. ("Chris-Craft"), the Association of Independent Television Stations, Inc., Turner Broadcasting System, Inc., and WSBK License, Inc. have filed in support of Tribune's Petition.

[2] 47 U.S.C. § 325(b)(2)(D). The Commission's rule codifying the superstation exception is at new 47 C.F.R. § 76.64(b)(2).

have the right to elect between retransmission consent and must-carry status in its ADI. Tribune Petn. at 4-5. Moreover, the legislative history of the provision makes clear that the purpose of the exception was to "avoid any disruption of the settled arrangements for carriage of distant signals,"[3] not to allow cable companies that have always received the superstation's signal over-the-air to evade retransmission consent requirements. Id. at 5-6.[4]

Time Warner opposes this interpretation. Time Warner offers no explanation for why Congress would have excluded superstations from the election between must-carry and retransmission consent in their local market. Nor does Time Warner point to any legislative history suggesting that Congress in fact intended such an odd result.[5] Instead, Time Warner merely makes the conclusory assertion that "the language of the statute is clear that, if a cable operator receives the superstation's signal from a satellite, the superstation is

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[3] S. Rep. No. 92, 102nd Cong., 1st Sess. 37 (1991) (emphasis added).

[4] In addition, interpreting the superstation exception as limited to out-of-market signals would harmonize the superstation exception with the provision of the Act making inclusion of superstations on the basic tier permissive rather than mandatory, which also is limited to out-of-market retransmissions. See 47 U.S.C. § 543(b)(7)(A)(iii).

[5] See, e.g. Green v. Bock Laundry Machine Co., 490 U.S. 504, 527 (1989) (Scalia, J., concurring) (finding it "entirely appropriate to consult all public material, including the background of [the Rule] and the legislative history of its adoption, to verify that what seems to us an unthinkable disposition . . . was indeed unthought of").

without retransmission-consent rights, even within its 'home' market."[6]

Time Warner's reliance on the supposedly "clear" language of the exception -- which is the sole basis for its position -- is unavailing. The statute is silent on the issue of whether the "superstation exception" includes local signals or is limited to out-of-market signals: it simply does not address the issue. Moreover, the language of the exception is far from plain and unambiguous. Indeed, as Chris-Craft has pointed out, the Commission already has recognized that the language of the exception is ambiguous.[7] Because Congress has not spoken directly to that question, the Commission is free to adopt a reasonable construction of the provision. See Chevron, U.S.A., Inc. v. National Resources Defense Council, Inc., 467 U.S. 837, 842-43 (1984) (emphasis added) (agency may adopt reasonable construction when statute is "silent or ambiguous" with respect to the specific issue (emphasis added)).

For example, in United States v. City of Fulton, 475 U.S. 670 (1986), the Supreme Court upheld an agency construction of rate setting provisions of the Flood Control Act. Section 5 of the Act provided that "the rate schedules [shall] become

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[6] Opposition of Time Warner Entertainment Company, L.P., to Petitions for Reconsideration or Clarification, at 15. Time Warner also argues that "the statute is clear that this holds true even if a particular cable operator receives the superstation's signal off the air, so long as any other cable operator receives the signal from a satellite." Opp. 15 (citing Petition for Reconsideration of Newhouse Broadcasting Corp. 3-4). The Commission correctly rejected this argument in its Report and Order, at ¶ 142.

[7] Chris-Craft Response, at 2; see also Tribune Petn. at 3.

effective upon confirmation and approval by the [Secretary]"; the agency allowed rates to take effect on an interim basis, prior to confirmation and approval by the Secretary. The Court concluded that the provision "says little about the appropriate method of rate implementation" under the Act, and "[t]he agency's practice of allowing rates to become effective after interim 'confirmation and approval,' even though the rates are subject to further examination, is as consistent with the bare statutory language as is respondents' preferred arrangement." Id. at 666-67 (emphasis in original).

Similarly, in Branch v. FCC, 824 F.2d 37 (D.C. Cir. 1987), cert. denied, 485 U.S. 959 (1988), the court of appeals upheld the FCC's construction of the statutory phrase "[a]ppearance by a legally qualified candidate on any . . . bona fide newscast" as not including television appearances by a candidate newscaster. Although the candidate newscaster appeared on a bona fide newscast under a literal reading of the provision, the court relied on the "readily discernible" intent of Congress and legislative history of the provision in upholding the Commission's interpretation. Id. at 45.[8]

Here, too, the superstation exception does not address whether it applies only to out-of-market signals and is otherwise ambiguous. It is precisely for cases such as this one that Congress expressly authorized the Commission to interpret the

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Reply Comments In Support Of Petition For Reconsideration And/Or Clarification Of Tribune Broadcasting Company have this 17th day of June, 1993, been served by first class mail, postage prepaid, on the following:

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